

Appln. Serial No. 10/790,540

HRT0256C2

REMARKS

Claims 1-20 are cancelled. Claims 21-36 are pending.

The Examiner objected to the abstract. Applicants hereby submit a new Abstract to replace the initially filed abstract.

The Examiner objected to the claims on grounds that are difficult for Applicants to understand. Applicants have amended claims 22 and 23 to more clearly indicate that the "opening" initially claimed referred to the "preexisting opening". The element of each of claims 22 and 23 refers to "the first distance" and "the second distance", which each find their antecedent basis in claim 21. In claim 21, the first and second distances define a distance that separates the distal portions of the device when the device is in a first configuration and a second configuration, respectively. Applicants are claiming a device having the elements enumerated in claim 21 and the subsequent dependent claims.

The Examiner objected to claims 24, 29, 35 and 36 as being dependent on a device claim, but referring to those claims as method claims. Applicants thank the Examiner for pointing out this error, and have amended claims 24, 29, 35 and 36 to refer to the claims as device claims.

Applicants have also amended claims 21 and 32 to more clearly define the invention.

Claims 21-36 stand rejected under 35 USC 102(b) as being anticipated by Cerwin (US Patent No. 4317451). Applicants traverse the rejection, as Applicants submit that Cerwin fails to disclose or suggest at least one element of claim 21. The Examiner states that Cerwin discloses "an annular-shaped ring 17". Applicants submit that element 17 of Cerwin is not annular. Rather element 17 is described as a "horizontal staple leg locking bar" at column 2, line 63, and is clearly shown as a linear element in Figure 7. Locking bar 17 acts to lock staple legs 13 with respect to one another once die 22 deforms staple legs 13 from the position shown in Figure 3 to that shown in Figure 5. Locking bar 17 is not described or depicted as being annular.

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As a result, Cerwin does not anticipate claim 21 or the claims that depend therefrom. Applicants request the Examiner to withdraw the rejection.

Please charge Deposit Account No. 10-0750/HRT0256C2/BST for any costs or fees associated with the additional claims or for any cost or fee incurred during the prosecution of this application.

Respectfully submitted,

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